

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NATHANIEL MCDOW,

Defendant-Appellant.

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UNPUBLISHED

July 29, 2008

No. 278950

Wayne Circuit Court

LC No. 07-005587-01

Before: Saad, C.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of armed robbery, MCL 750.529, and sentenced to 45 months to 10 years in prison. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted of robbing the complainant when the complainant attempted to repay a debt that he owed to defendant. The complainant testified that when he went to defendant's girlfriend's home to pay defendant a \$15 debt, defendant put a gun to his forehead and took approximately \$50 from him. The complainant subsequently called 911 and also flagged down the police. The police arrested defendant in the driveway of the residence and recovered \$43 from him. Defendant gave a statement to the police in which he denied that the complainant came to his girlfriend's home on the date in question.

Defendant's girlfriend, Sabrina Buckley, testified that she answered the door when the complainant came to the home; he said he owed defendant some money and asked if defendant was home. Defendant went to the door 20 minutes later and, to her knowledge, the complainant was not there. According to Buckley, defendant was at the front door for about a minute. Defense witness Tosha Smith claimed to have been present in the home during the time in question, but was unaware that the complainant came to the home.

On appeal, defendant argues that he is entitled to a new trial or remand for a *Ginther*<sup>1</sup> hearing on his claim that trial counsel was ineffective for failing to adequately investigate a

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<sup>1</sup> *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).

potential defense witness. He relies on the affidavit of Harry Hummer, who averred that he paid defendant \$60 in cash the day before the incident.

To establish ineffective assistance of counsel, a defendant must show that counsel's representation "fell below an objective standard of reasonableness" and "must overcome the strong presumption that his counsel's action constituted sound trial strategy under the circumstances." *People v Toma*, 462 Mich 281, 302; 613 NW2d 694 (2000). Defendant must also demonstrate that counsel's deficient performance "was so prejudicial to him that he was denied a fair trial." *Id.* This requires that he demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different . . . ." *Id.* at 302-303 (citation and internal quotations omitted).

Remand for development of a factual record on this issue is unnecessary. See MCR 7.211(C)(1)(a)(ii). Even accepting Hummer's averments as true, absent some offer of proof that the cash purportedly received from Hummer was identifiable, defendant's receipt of cash on the day before the charged offense does not tend to prove or disprove that he robbed the complainant. Because there is no basis for concluding that the omitted evidence would have affected the jury's verdict, defendant has not shown that he was prejudiced by trial counsel's alleged failure to contact or interview Hummer before trial.

Affirmed.

/s/ Henry William Saad  
/s/ Karen M. Fort Hood  
/s/ Stephen L. Borrello